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1                   **DEFENDANTS' STATEMENT IN SUPPORT OF SEALING A PORTION OF**

2                   **PLAINTIFFS' BRIEF IN SUPPORT OF PROPOSED DEFENDANT FACT SHEET**

3                   Pursuant to Civil Local Rules 79-5(f)(3) and (c)(1), and the Protective Order entered in this  
 4 case, dated December 28, 2023, ECF 176 (“Protective Order”), Defendants Uber Technologies,  
 5 Inc., Rasier, LLC, Rasier-CA, LLC (collectively “Uber”), respectfully submit this statement in  
 6 support of Plaintiffs’ Administrative Motion to Consider Whether Another Party’s Material  
 7 Should Be Sealed, dated January 31, 2024, ECF 234.

8                   **I. BACKGROUND AND REQUESTED SEALING**

9                   Uber and Plaintiffs submitted competing fact sheet proposals to the Court on January 31,  
 10 2024. *See generally* ECF 234–37. In connection with that dispute, Plaintiffs submitted Plaintiffs’  
 11 Brief in Support of Proposed Defendant Fact Sheet (hereinafter “Plaintiffs’ DFS Statement”), ECF  
 12 234-3. A small portion of Plaintiffs’ DFS Statement—specifically, the material at 3:16–4:7—fits  
 13 within the material designated Confidential in the Protective Order. *See* ECF 176 at 2.  
 14 Accordingly, Plaintiff provisionally filed Plaintiffs’ DFS Statement under seal.

15                   Where a filing party moves to seal because a document has been designated as confidential  
 16 by another party, the designating party must file a statement and/or declaration within seven days  
 17 of the motion’s filing providing a “specific statement of the applicable legal standard and the  
 18 reasons for keeping a document under seal.” Local Rule 79-5(c)(1); *see also id.* at 79-5(f)(3).

19                   As discussed below, Uber seeks to seal a very limited portion of Plaintiffs’ DFS  
 20 Statement—the material at 3:16–4:7—that discusses an internal data management tool and reveals  
 21 confidential, commercially sensitive, proprietary business information. Uber does not object to  
 22 the public filing of any other part of Plaintiffs’ DFS Statement. For the Court’s convenience, Uber  
 23 has submitted a redacted copy of Plaintiffs’ DFS Statement as an exhibit to the Declaration of  
 24 Jessica E. Phillips (“Phillips Decl.”) that redacts the only material in Plaintiffs’ DFS Statement  
 25 that Uber requests remain under seal. Phillips Decl. Ex. A.

1           **II. APPLICABLE LEGAL STANDARD**

2           When courts consider motions to seal records attached to non-dispositive motions like the  
 3 current discovery dispute, they apply the “good cause” standard of Rule 26(c) of the Federal Rules  
 4 of Civil Procedure because such records “are often ‘unrelated, or only tangentially related, to the  
 5 underlying cause of action.’” *Kamakana v. City of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)  
 6 (citation omitted); *accord Adtrader, Inc. v. Google LLC*, No. 17-cv-07082-BLF, 2020 WL  
 7 6387381, at \*1 (N.D. Cal. Feb. 24, 2020). In contrast, filings that are more directly related to a  
 8 case’s merits “may be sealed only upon a showing of ‘compelling reasons’ for sealing.” *Adtrader,*  
 9 *Inc.*, 2020 WL 6387381, at \*1 (quoting *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092,  
 10 1101–02 (9th Cir. 2016)).

11           The “lesser” good cause standard applies here because Uber seeks to maintain the sealing  
 12 of a limited portion of a filing connected to a discovery motion that is not more than tangentially  
 13 related to this case’s merits. *Adtrader, Inc.*, 2020 WL 6387381, at \*1; *see also Brown v. Google*  
 14 *LLC*, No. 20-cv-03664-YGR (SVK), 2022 WL 4227545, at \*1 (N.D. Cal. Aug. 9, 2022) (“Here,  
 15 the ‘good cause’ standard applies because the information the parties seek to seal was submitted  
 16 to the Court in connection with discovery-related motions, rather than a motion that concerns the  
 17 merits of the case.”); *cf. United States v. Selugh*, 896 F.3d 1007, 1015 (9th Cir. 2018) (“[M]aterials  
 18 submitted to a court for its consideration of a discovery motion are actually one step further  
 19 removed in public concern from the trial process than the discovery materials themselves.”  
 20 (citation omitted)). Accordingly, “the general history of access and the public policies favoring  
 21 disclosure” do not apply as strongly. *Kamakana*, 447 F.3d at 1178–79.

22           “Good cause” is a non-rigorous standard that has been construed broadly across procedural  
 23 and statutory contexts.” *Ahancian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010).  
 24 The “good cause” sealing standard is the same standard that applies to the entry of a protective  
 25 order in civil discovery. *See Fed. R. Civ. P. 26(c)(1)* (“The court may, for good cause, issue an  
 26 order to protect a party or person from annoyance, embarrassment, oppression, or undue burden  
 27 or expense . . . .”). It “gives the district court much flexibility in balancing and protecting the  
 28 interests of private parties.” *Kamakana*, 447 F.3d at 1180.

1           **III. REASONS FOR KEEPING REQUESTED MATERIAL UNDER SEAL**

2           The discussion of Uber’s internal data management tool in Plaintiffs’ DFS Statement  
 3 should be sealed under the good cause standard. Indeed, sealing would be appropriate even if the  
 4 stricter compelling reasons standard applied. The discussion relates to Uber’s internal systems  
 5 and methods for processing its data, which Uber has a legitimate interest in sealing in order to  
 6 avoid harm to its competitive standing, and there are no less restrictive alternatives to sealing this  
 7 small segment of Plaintiffs’ DFS Statement.

8           **A. The Balance of Private and Public Interests Warrant Sealing**

9           The material at 3:16–4:7 of Plaintiffs’ DFS Statement features a detailed discussion of an  
 10 internal data management tool that Uber uses in connection with its business. *See* Declaration of  
 11 William Anderson (“Anderson Decl.”) ¶ 3. The name of this tool and Uber’s capabilities with it  
 12 are confidential, commercially sensitive information. *Id.* ¶¶ 4–5. As discussed further in the next  
 13 section, disclosure of this private information could cause serious harm to Uber by giving  
 14 competitors unwarranted insight into Uber’s business. *Id.*

15           This information also fits within the material the Protective Order designates as  
 16 Confidential. *See* ECF 176 at 2 (“Confidential” material includes “business or commercial  
 17 information”). Although the Protective Order does not, by itself, entitle a party to file materials  
 18 under seal, *id.* at 1–2, the fact that this material in Plaintiffs’ DFS Statement falls within the  
 19 definition of “Confidential” lends support to the propriety of the Court sealing that material now.

20           Moreover, “[c]ourts in this Circuit have held that [certain] confidential business  
 21 information,” like the information included in Plaintiffs’ DFS Statement, “satisfies the ‘compelling  
 22 reasons’ standard” for sealing. *Jones v. PGA Tour, Inc.*, No. 22-cv-04486-BLF, 2023 WL  
 23 3594058, at \*2 (N.D. Cal. May 22, 2023); *e.g., Munoz v. GEICO Gen. Ins. Co.*, No. 19-cv-03768-  
 24 HSG, 2022 WL 1193259, at \*2 (N.D. Cal. Mar. 31, 2022) (granting request to seal material  
 25 containing “confidential proprietary business information, including details on how a proprietary  
 26 business tool works” under compelling reasons standard). “Such information is therefore sealable  
 27 under the ‘less exacting’ good cause standard.” *Jones*, 2023 WL 3594058, at \*2 (citation omitted);  
 28 *e.g., FTC v. DirecTV, Inc.*, No. 15-cv-01129-HSG (MEJ), 2016 WL 7386133, at \*1–2 (N.D. Cal.

1 Dec. 21, 2016) (finding good cause to seal material containing a “discussion of internal processes  
 2 [and] data tracking tools”).

3 Further, sealing is all the more reasonable here, where the information at issue does not go  
 4 to the merits of this multidistrict litigation. *See Kamakana*, 447 F.3d at 1180 (“The application of  
 5 a strong presumption of access to sealed records, *not directly relevant to the merits of the case*,  
 6 would eviscerate the ‘broad power of the district court to fashion protective orders.’” (emphasis  
 7 added) (citation omitted)). Because Uber seeks to maintain the sealing of a portion of a filing  
 8 connected to a discovery-related motion that is only tangentially related to this case’s merits, the  
 9 public interest in accessing the material is *de minimis*, and “the private interests of [the] litigants  
 10 are ‘the only weights on the scale.’” *Ctr for Auto Safety*, 809 F.3d at 1097 (citation omitted); *cf.*  
 11 Local Rule 79-5(c)(1)(i).

12 **B. Uber’s Competitive Standing Will Be Injured If Sealing Is Denied**

13 The material at 3:16–4:7 of Plaintiffs’ DFS Statement thoroughly describes an internal data  
 14 management tool that Uber uses in connection with its business. *See Anderson Decl.* ¶ 3. Uber  
 15 treats this information as confidential. *Id.* ¶ 4. If this private, commercially sensitive, and  
 16 proprietary business information were to be released to the public, Uber’s competitors and  
 17 potential business partners would gain insight into Uber’s internal business operations, potentially  
 18 compromising Uber’s competitive standing. *Id.* ¶ 5. Sealing is justified to avoid this harm to Uber  
 19 under these circumstances. *See Adtrader, Inc.*, 2020 WL 6387381, at \*1 (“Courts have found that  
 20 a party has demonstrated compelling reasons warranting sealing where ‘confidential business  
 21 material . . . could result in improper use by business competitors seeking to replicate [the  
 22 company’s] business practices and circumvent the time and resources necessary in developing  
 23 their own practices and strategies.’” (alteration in original) (citation omitted)); *FTC v. DirecTV,  
 24 Inc.*, 2016 WL 7386133, at \*1–2; *cf.* Local Rule 79-5(c)(1)(ii).

25 **C. A Less Restrictive Alternative to Sealing Is Not Sufficient**

26 No less restrictive alternative to sealing the material at 3:16–4:7 of Plaintiffs’ DFS  
 27 Statement is sufficient. *Cf.* Local Rule 79-5(c)(1)(iii). Uber has proposed a very narrowly tailored  
 28 order that is designed to seal only a small segment of Plaintiffs’ DFS Statement and only the

1 material that is truly sealable. *Cf.* Local Rule 79-5(c)(3).<sup>1</sup> The material that Uber proposes sealing  
 2 contains only sensitive information that would harm Uber if it were disseminated publicly. As  
 3 such, actions short of sealing would be insufficient to protect Uber's business interests and  
 4 preserve its competitive standing.

5 **IV. CONCLUSION**

6 For the foregoing reasons, Uber respectfully requests that the Court order the material at  
 7 3:16–4:7 of Plaintiffs' DFS Statement be sealed and redacted from the publicly filed documents.  
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9 DATED: February 7, 2024

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10 By: /s/ Jessica E. Phillips  
 11 JESSICA E. PHILLIPS

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<sup>1</sup> Uber's proposed order lists in table format each portion of each document that Uber seeks to seal. *Cf. id.*